

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARIE-LOUISE PAUSON,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC,

Defendant.

CASE NO. C15-5612-RBL

ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS

THIS MATTER is before the Court on Defendant Bayview's Motion for Judgment on the Pleadings. [Dkt. #24] Pro se plaintiff Pauson borrowed \$338,000¹ from Washington Mutual in 2006. In her original [Dkt. #1] and amended [Dkt. #6] complaints, Pauson claims she rescinded the loan under TILA (15 U.S.C. §1635) in July 2015 (by sending Bayview a certified letter and recording her notice of rescission).

Pauson sued Bayview for alleged TILA violations in 2015, while a foreclosure was pending. After a bankruptcy stay, the foreclosure was completed and the case was re-opened.

¹ The exact nature of the loan is not clear, though the records suggest that it was a purchase loan.

1 Pauson seeks quiet title based on the rescission, though she implicitly admits she has not
2 tendered the loan proceeds back to her creditor.

3 In her Second Amended Complaint [Dkt. #27-1], Pauson claims that she also rescinded
4 the loan in 2008, by mailing a letter to a Nevada office of her, by then already extinct, original
5 lender, Washington Mutual. [Dkt. #27 -3]

6 Bayview seeks judgment on the pleadings arguing that Pauson's rescission was untimely
7 and ineffective, that TILA rescission under 15 U.S.C. §1635 does not apply to residential loan
8 transactions, and that she has failed to allege (and cannot allege) that she ever tendered the loan
9 proceeds back to her lender as part of the rescission.

10 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
11 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
12 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege
13 facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct.
14 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads
15 factual content that allows the court to draw the reasonable inference that the defendant is liable
16 for the misconduct alleged." *Id.* Although the Court must accept as true the Complaint's well-
17 pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c)
18 motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*
19 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds'
20 of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
21 recitation of the elements of a cause of action will not do. Factual allegations must be enough to
22 raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
23 (2007) (citations and footnotes omitted). This requires a plaintiff to plead "more than an
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1 unadorned, the-defendant-unlawfully-harmed-me-accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing
2 *Twombly*).

3 Although *Iqbal* establishes the standard for deciding a Rule 12(b)(6) motion, Rule 12(c)
4 is “functionally identical” to Rule 12(b)(6) and that “the same standard of review” applies to
5 motions brought under either rule. *Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*,
6 647 F.3d 1047 (9th Cir. 2011), citing *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192
7 (9th Cir.1989); see also *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (applying *Iqbal* to
8 a Rule 12(c) motion).

9 On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to
10 amend the pleading was made, unless it determines that the pleading could not possibly be cured
11 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,
12 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether
13 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*
14 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

15 TILA gives borrowers the conditional right to rescind *certain* loans for up to three years
16 after the transaction is consummated. See 15 U.S.C. §1635(f); *Jesinoski v Countrywide Loans,*
17 *Inc.*, 135 S.Ct. 790 (2015). But the *unconditional* right to rescind lasts only three days. 15 U.S.C.
18 §1635(a). The right to rescind is extended only if the lender fails to make disclosures it is
19 required to make under TILA. See *Jesinoski* at 792.

20 Pauson has not alleged in any of her three complaints that Washington Mutual failed to
21 make any required disclosures to her. She did not so claim in either of her rescission notices, and
22 she does not so claim in her response to the Motion. She has not plausibly pled that some
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1 disclosure was not made, or that she had three years to rescind. She only recently even sought to
2 claim that she rescinded within three years; her first two complaints alleged a *nine* year delay.

3 Furthermore, she has not established that she had a right to rescind even in the absence of
4 some required disclosure, because she has repeatedly alleged a residential mortgage transaction.
5 Bayview points out that under 15 U.S.C. §1635(e)(1) and (2), TILA’s rescission procedures do
6 not apply to (most) “residential mortgage transactions”—including those used to acquire or
7 construct a residence, or non cash-out re-finance transactions with the same lender. Pauson has
8 not plausibly pled a loan transaction that is within TILA’s rescission procedures, even if she was
9 otherwise entitled to rescind, and timely followed those procedures.

10 Pauson’s reliance on *Jesinoski* is misplaced, though in the Court’s view, that that opinion
11 needlessly invited such reliance. *Jesinoski* addressed whether a rescinding borrower had to file
12 suit within three years of the date the loan was consummated. *See Jesinoski* at 791 (“The
13 question presented is whether a borrower exercises this right by providing written notice to his
14 lender, or whether he must also file a lawsuit before the 3–year period elapses.”).

15 It held only that a borrower could meet TILA’s three year rescission limitations period by
16 giving notice, and was not required to actually file a lawsuit seeking rescission within that
17 period. *Jesinoski*, 135 S.Ct. at 793; *see also* 15 U.S.C. §1635(f). *Jesinoski* did not address
18 whether the borrower there even had the right to rescind—it did not address whether the lender
19 failed to make required disclosures, and it did not address the import or impact of Sections
20 1635(e)(1) and (2) on his right to rescind what the court described as a “refinance” loan
21 transaction.

22 Unfortunately for in-default borrowers (and District Courts) everywhere, many read the
23 case as holding that any mortgage borrower has three years to notify her lender that the loan is
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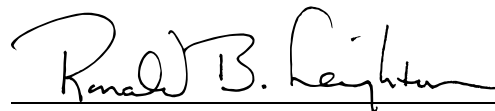
1 “rescinded” and if she does so (and the lender does not sue within 20 days), that it is the end of
2 the loan, the borrower’s obligations, and the lender’s interest in the property. But that is not what
3 *Jesinoski* holds, and it patently is not what TILA intended. Such a holding would decimate the
4 mortgage lending industry, and with it the economy.

5 Even if Pauson had the right to rescind, and even if she timely notified somebody of her
6 intention to do so, nothing in *Jesinoski* or TILA excused her from *ever* tendering the loan
7 proceeds back to her lender in order to actually “rescind” the loan transaction. *See In Re Brown*,
8 538 B.R. 714, 718 (Bankr. E.D. Va. 2015).

9 There are other flaws in Pauson’s rescission/quiet title claim, including the fact that the
10 property has already been sold at foreclosure. In any event, Pauson’s rescission claim is not
11 plausible, and there is nothing she could possibly add or alter to state a viable claim. Bayview’s
12 motion for judgment on the pleadings is therefore GRANTED, and Pauson’s claims against it are
13 DISMISSED with prejudice and without leave to amend.

14 IT IS SO ORDERED.

15 Dated this 30th day of August, 2016.

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18 Ronald B. Leighton
19 United States District Judge
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